

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 13, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRYAN PAUL HERNANDEZ,

Petitioner,

v.

ERIC CARPENTER,

Respondent.

No. 2:24-CV-00009-SAB

**ORDER DISMISSING HABEAS
PETITION**

Petitioner Bryan Paul Hernandez, a civil detainee at the Eastern State Hospital (“ESH”), filed a *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 on January 10, 2023. ECF No. 1.

The Court reviewed the Petition and concluded the only habeas claim properly before it was Petitioner’s assertion that he was denied the effective assistance of trial counsel. ECF No. 6. In his Petition, Petitioner claims that:

I asked my attorney for an independent expert. She refused to do so. I asked for a hearing she said no. I then asked to be present, she also said no. I then tried to fire her, she said no.

Petitioner is asking for discharge from Eastern State Hospital and appointment of counsel.

Service was ordered and the State of Washington filed its response. ECF No. 19. The State of Washington is represented by Amy Flanigan.

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Background Facts

The following facts are taken from the state's Response to Motions for Temporary Release and to Amend Petition, ECF No. 15:

Between October 2019 and January 2021, Petitioner assaulted his mother and started a fire in their apartment culminating in a standoff with law enforcement, assaulted two healthcare providers, and assaulted jail staff. Benton County charged Petitioner with multiple felonies as a result. Initially, evaluators opined that Petitioner was competent to proceed to trial in those matters, but in 2022 evaluators came to the opposite conclusion. Attempts at competency restoration proved unsuccessful, and in May 2023, Benton County dismissed Petitioner's criminal charges and ordered Eastern State Hospital (ESH) to evaluate him for civil commitment.

Medical professionals at ESH diagnosed Petitioner with Autism Spectrum Disorder, Intermittent Explosiveness Disorder, and Unspecified Bipolar Disorder with Psychotic Features. His symptoms include pressured and disjointed speech, elevated mood, delusional thought content, hallucinations, mood lability, poor insight/judgment, disorganized behavior, fixation on conflict with his father and perceived violations of his rights, making false allegations, exhibiting extreme agitation, yelling and punching walls, and threatening assaults of peers and staff. He required two to one staff monitoring due to his emotional lability and aggressive, assaultive behavior. ESH had to call the psychiatric emergency response team on numerous occasions because of Petitioner's behavior. He has a long history of assaultive incidents.

On June 5, 2023, ESH petitioned for up to 180 days of involuntary treatment, alleging Petitioner Mr. Hernandez was (1) gravely disabled, and (2) had been determined to be incompetent and criminal charges had been dismissed, had committed acts constituting a felony, and, as a result of a behavioral health disorder, presented a substantial likelihood of repeating similar acts. Rather than proceed to hearing, Petitioner, through counsel on July 26, 2023, stipulated to the petition and the court ordered 180 days of involuntary treatment.

Petitioner's appeal of the July order is pending before Division III of the Washington State Court of Appeals.

1 On January 4, 2024, ESH filed a new petition for an additional 180 days
2 of involuntary treatment, alleging that Petitioner remained gravely
3 disabled and presented a substantial likelihood of repeating acts similar
4 to his dismissed felonies.

5 Petitioner continued to make threats, attempted to bite or kick staff,
6 displayed poor judgment and impulsivity, acted agitated and
7 uncooperative, and possessed poor insight into his mental illness. In
8 December 2023, he assaulted a nurse and continued to require two to
9 one staff monitoring due to his assaultive behavior.

10 The record shows that an Order of Continuance, dated February 26,
11 2024 was entered in Spokane County Superior Court. The court ordered that
12 Petitioner remain at ESH until the April 8, 2024 hearing or further order from
13 the Court.

14 Petitioner was appointed appellate counsel by the Washington Court of
15 Appeals on January 18, 2024.

16 Analysis

17 Petitioner is challenging the legality of his confinement at ESH.
18 However, it appears that the direct appeal of the confinement order is still
19 pending with the Washington Court of Appeals. As such, his claim is not ripe
20 for review.

21 Before a federal court can address the merits of a § 2254 claim, a
22 petitioner must have exhausted all available state court remedies, as required
23 by 28 U.S.C. § 2254(b)(1):

24 An application for a writ of habeas corpus on behalf of a person in
25 custody pursuant to the judgment of a State court shall not be granted
26 unless it appears that—

27 (A) the applicant has exhausted the remedies available in
28 the courts of the State; or

(B)(i) there is an absence of available State corrective
process; or

(ii) circumstances exist that render such process ineffective

1 to protect the rights of the applicant.

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3 *See also Coleman*, 501 U.S. 722, 731 (1991) (“This Court has long held that a
4 state prisoner’s federal habeas petition should be dismissed if the prisoner has
5 not exhausted available state remedies as to any of his federal claims.”).

6 Petitioner’s failure to exhaust his state remedies serves as a bar to his
7 habeas petition.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Petitioner’s Petition for Writ of Habeas Corpus by a Person in State
10 Custody pursuant to 28 U.S.C. § 2254, ECF No. 1, is **DISMISSED**.

11 2. All pending motions are **DENIED**, as moot.

12 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
13 this Order, provide copies to Plaintiff and counsel, and **close** the file.

14 **DATED** this 13th day of June 2024.



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19 Stanley A. Bastian
20 Chief United States District Judge
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